



Paper No. 22

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In re Application of:
Richard Scheps
Application Serial No.: 08/908,778
Filed: August 7, 1997
For: HIGH RESOLUTION IMAGING LIDAR FOR
DETECTING SUBMERGED OBJECTS

DECISION
ON PETITION

This is a decision on the petition filed August 29, 2003 under 37 C.F.R. § 1.181(a) to withdraw the holding of abandonment. No fee is required.

The application was held abandoned because the Board of Patent Appeals and Interferences rendered its decision on January 23, 2003, the time period for seeking court review of the decision had expired and there were no allowed claims, according to the Notice of Abandonment mailed on July 14, 2003.

Petitioner alleges procedures after the Board of Patent Appeals and Interference's decision was not properly carried out and the one month time period mentioned by the examiner within a telephone interview, was not appropriately applied.

A review of the record indicates that the Board of Patent Appeals and Interferences rendered a decision on January 23, 2003 affirming the rejection of claims 1-3, 5, and 7 but reversing the examiner's rejection of claims 4 and 6.

MPEP §1214 outlines Office procedures following a decision by the Board of Patent Appeals and Interferences. MPEP §1214.06 "Examiner Sustained in Whole or in Part" states in part:

I. NO CLAIMS STAND ALLOWED

(B) If the Board or court affirms a rejection against an independent claim and reverses all rejections against a claim dependent thereon, the examiner, after expiration of the period for further appeal, should proceed in one of two ways:

- (1) Convert the dependent claim into independent form by examiner's amendment, cancel all claims in which the rejection was affirmed, and issue the application; or
- (2) Set a 1-month time limit in which appellant may rewrite the dependent

claim(s) in independent form. Extensions of time under 37 CFR 1.136(a) will not be permitted. If no timely reply is received, the examiner will cancel all rejected and objected to claims and issue the application with the allowed claims only.

A review of the record does not produce evidence of an examiner's amendment which places claims 4 and 6 into independent form and cancels claims 1-3, 5 and 7. In addition, no evidence in the file record suggests that the examiner issued a Quayle action which set a one month time period for Applicant to draft the amendment.

Therefore, it is determined that proper Office procedures were not followed and the mailing of the Notice of Abandonment was in error. Accordingly, the Notice of Abandonment is hereby vacated and the Holding of Abandonment withdrawn.

For the reasons set forth above, the petition is **GRANTED**.

The application will be forwarded to the examiner for appropriate action.



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